85-771

Supreme Court, U.S.
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CLERK

No. _____

In The

Supreme Court of the United States

OCTOBER TERM, 1985

ROBERT G. BARON,

Petitioner,

vs.

ANDREW P. MELONI, INDIVIDUALLY AND AS SHERIFF OF THE COUNTY OF MONROE, AND THE COUNTY OF MONROE,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

ROBERT G. BARON
Petitioner
Appearing Pro Se
23 Chesham Way
Fairport, New York 14450
Telephone: (716) 425-1007

Daily Record Corporation
Rochester, New York

(12040)

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NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

ROBERT G. BARON, PETITIONER,

V.

ANDREW P. MELONI, INDIVIDUALLY AND AS SHERIFF OF THE COUNTY OF MONROE, AND THE COUNTY OF MONROE,

RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

The petitioner, Robert G. Baron, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in this Proceeding on August 12, 1985.

QUESTIONS PRESENTED

1. Whether an order not to associate with a certain individual, given by the predecessor of respondent sheriff to the petitioner, a deputy sheriff, and petitioner's subsequent discharge by respondent, sheriff, for his failure to obey said order, violated petitioner's right to privacy and free association under the First and Fourteenth Amendments to the United States Constitution.

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OPINION BELOW

The Court of Appeals did not write an opinion. Their judgment of affirmance appears in the appendix hereto. The decision and order of the District Court for the Western District of New York, dated January 17, 1985, which order was affirmed by the judgment of affirmance, appears in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the Second Circuit was entered on August 12, 1985 and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 18 U.S.C.) 1258 (1).

STATEMENT OF THE CASE

The jurisdiction of the district court was invoked because petitioner claims his constitutional rights under the First

and Fourteenth Amendments to the United States Constitution have been violated.

Petitioner was a deputy sheriff of Monroe County from February 22, 1971 until May 7, 1980. On April 24, 1978 petitioner was ordered not to associate with one Linda Vaccaro, the estranged wife of one Angelo Vaccaro who was being investigated by the Monroe County Organized Crime Task Force. Subsequent to that time, Angelo Vaccaro was convicted of a crime and incarcerated. In March of 1980, while Angelo Vaccaro was incarcerated, petitioner again associated with Linda Vaccaro, who was still estranged from Angelo Vaccaro, and for this association in 1980 and not for his prior association, petitioner was charged with insubordination, consorting with persons of ill repute and conduct discrediting the department. There was no dispute that other than for petitioner's association with Linda Vaccaro, petitioner performed well in his duties as a

deputy sheriff. On May 7, 1980, following a hearing, respondent Meloni discharged petitioner for insubordination only. The termination was affirmed in a November 19, 1980 arbitration proceeding.

Petitioner filed a complaint September 1, 1982 in United States District Court, Western District of New York, before Hon. Michael A. Telesca, alleging that his right of association under the First and Fourteenth Amendments to the United States Constitution had been violated.

Judge Telesca granted a motion by Respondents for summary judgment on February 18, 1983.

On Appeal, the United States Court of Appeals for the Second Circuit vacated that judgment and remanded the case for further findings. In their order remanding the case, the court wrote that the purpose of the remand was to determine whether the orders that petitioner violated in associating with Linda Vaccaro were reasonable

in March of 1980 and stated "if those orders had ceased to be reasonable on March 21 and 22, 1980, then the issue arises whether plaintiff was validly found guilty of insubordination."

Upon the remand, Judge Telesca excused himself from the case and on January 17, 1985 Hon. John T. Curtin again granted respondent's motion for summary judgment. The only new addition to the record on this second motion for summary judgment is a February 27, 1984 deposition of respondent Meloni, which deposition appears in the appendix hereto. In this deposition, respondent Meloni's main emphasis is that petitioner's association with Linda Vaccaro was bringing discredit to the department. He stated that the department might have an interest in Linda Vaccaro but did not indicate that she was the subject of any investigation.

On August 12, 1985 the United States

Court of Appeals for the Second Circuit affirmed the order of Hon. John T. Curtin granting summary judgment to respondents.

REASON FOR GRANTING OF THE WRIT

1. THE DECISION BELOW CONFLICTS WITH THE DECISION OF ANOTHER COURT OF APPEALS AS TO THE PROPER INTERPRETATION OF THE FIRST AMENDMENT CONCERNING FREEDOM OF ASSOCIATION.

In the instant case, petitioner, a deputy sheriff, was ordered not to see a woman who was the estranged wife of an organized crime figure. Subsequent to the order, the estranged husband was convicted and sent to prison. Following the estranged husband's incarceration, appellant disobeyed the order and was discharged for insubordination. The Second Circuit has here held that such action by the Respondent does not violate Petitioner's first and fourteenth Amendment rights of freedom of association.

The Eleventh Circuit has adopted a conflicting interpretation under a similar set of circumstances in Wilson v. Taylor 733F.2d1539 (1984). In that case, the court held that a Police Officer's association with a woman he was dating, the daughter of a convicted felon who was reputed to be a key figure in organized crime, was constitutionally protected and stated "the First Amendment freedom of association applies not only to situations where an advancing of common belief occurs, but also to purely social and personal association - we conclude the relationship between Wilson and Susan Blackburn was protected under the first amendment freedom of association."

It is argued that the association of a police officer with an estranged wife of a convicted and incarcerated crime figure should be of less significance to a law enforcement agency than the association of a police officer with the daughter of a

convicted unincarcerated organized crime figure who is not estranged from her father.

In both cases, police officers were ordered not to associate with certain individuals and in both cases, such orders violated their constitutional rights. Freedom of association is a fundamental right and any restrictions thereon are "subject to the closest scrutiny", N.A.A.C.P. v. Alabama, 357U.S. 449 (1958).

2. IMPORTANT CONSTITUTIONAL ISSUES ARE INVOLVED.

Freedom of Association is a constitutional guarantee and to unreasonably deprive a certain group of citizens, police officers, of this constitutional guarantee raises far-reaching Constitutional questions which should be reviewed by this court.

In this case, it is argued that not only was petitioner denied his constitutional rights, but that the final denial by the District Court was on a motion for

summary judgment without the petitioner having an opportunity to have his day in court as to the reasonableness or unreasonableness of the Order, for the disobedience of which he was discharged.

The main thrust of Respondent Meloni's deposition seems to be that petitioner's association with Linda Vaccaro would bring discredit on the department, but it is interesting to note that at a departmental hearing the Petitioner was found not guilty of discrediting the Sheriff's Department by association with said Linda Vaccaro. Petitioner argues that unless Linda Vaccaro or her estranged husband was the subject of an investigation, his association with her is constitutionally protected. Police officers do not surrender First Amendment rights by accepting government employment, Pickering v. Board of Education 391 U.S.563 (1963), Wilson v. Taylor supra.

Petitioner does not claim that a law enforcement officer may never be fired

because of his associations with others. Shawgo v Spradlin, 701F2d470 (5th Cir.), Cert. denied _____ U.S. _____, 104 S.Ct. 404,78L. Ed.2d 345 (1983). Petitioner does claim that an order not to associate must be reasonable, under the circumstances, and in this case the order, although reasonable when originally given, became unreasonable after the incarceration of Linda Vaccaro's husband, and petitioner's discharge for his disobedience of the unreasonable order violated his Constitutional rights.

CONCLUSION

For these reasons, a writ of certiorari should be issued to review the judgment of the Second Circuit.

Respectfully submitted,

APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROBERT G. BARON, CIV-82-816C

Plaintiff(s)

v.

ANDREW P. MELONI, Individually and as the Sheriff of the County of Monroe, and THE COUNTY OF MONROE,

Defendant(s)

SIR/MADAM: Take notice of a DECISION & ORDER of which the within is a copy, duly granted in the within entitled action on the 17th day of January, 1985 and entered in the Office of the Clerk of the United States District Court, Western District of New York on the 17th day of January, 1985.

Dated: Buffalo, New York

January 18, 1985

JOHN K. ADAMS, Clerk
U.S. District Court
Western District of
New York
U.S. Courthouse
Buffalo, New York
14202

TO: Frank S. Kedzielawa, Esq.

Nira T. Kermisch, Esq.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROBERT G. BARON,

Plaintiff,

CIV-82-816C

-vs-

ANDREW P. MELONI, Individually and as the Sheriff of the County of Monroe; and THE COUNTY OF MONROE,

Defendants.

APPEARANCES: LIPSITZ, GREEN, FAHRINGER, ROLL, SCHULLER & JAMES (FRANK S. KEDZIELAWA, ESQ., of Counsel), Buffalo, New York, for Plaintiff.

JOHN D.DOYLE, ESQ., Monroe County Attorney (NIRA T. KERMISCH, ESQ., of Counsel), Rochester, New York, for Defendants.

Plaintiff Robert G. Baron, a former member of the Monroe County Sheriff's Department, brings this action under 42 U.S.C. 1983. He claims that his discharge from the Sheriff's Department violated his

constitutional right to privacy, free association, and due process. Defendants, the County of Monroe and Andrew P. Meloni, County Sheriff, have moved for summary judgment under Rule 56 of the Federal Rules of Civil Procedure.

For the reasons that follow, the defendant's motion for summary judgment is granted, and the complaint is dismissed.

Factual History

Plaintiff served as a deputy sheriff with the Monroe County Sheriff's Department from February 22, 1971, until his discharge on May 7, 1980. In early 1978, he met Linda Vaccaro, wife of reputed organized crime member Angelo Vaccaro. In March or April, 1978, his patrol car was observed in the driveway of the Vaccaro residence. While not legally separated, Linda and Angelo Vaccaro were living apart at this time. Both Mrs. Vaccaro and the residence were under surveillance by the Monroe County Organized

Crime Task Force, which was attempting to locate her husband. Although Mrs. Vaccaro was known to have had past associations with organized crime figures, she was never convicted of any crime.

On April 24, 1978, plaintiff was summoned to the office of Chief of Detectives Anthony Yazback. He was then told of Mrs. Vaccaro's identity and of the Task Force's activities. Plaintiff was ordered not to associate with Mrs. Vaccaro.

Plaintiff was seen with Mrs. Vaccaro on three occasions during the months of June and July, 1978. On July 7, 1978, plaintiff was again ordered not to associate with Mrs. Vaccaro. On July 17, 1978, departmental charges were filed against plaintiff by then-Sheriff William Lombard. Although plaintiff was unsuccessful in his state court action, seeking to have the charges dismissed before the hearing, a hearing was never held. Baron v. Lombard,

71 A.D.2d 823 (4th Dept. 1979), aff'd, 50 N.Y.2d 896, 430 N.Y.S.2d 591 (1980).

On December 7, 1978, plaintiff wrote to then-Sheriff Lombard, seeking advice as to whether the orders not to associate with Mrs. Vaccaro were still in effect. Plaintiff received a response from Chief Deputy Thomas Cellura on December 15, 1978, which stated that the orders had not been rescinded.

New charges were filed against plaintiff on April 13, 1979, based on his association with Linda Vaccaro. He again attempted to stay the hearing in state court, and this time challenged the constitutionality of the order. On July 24, 1979, New York State Supreme Court Judge Elizabeth Pine ruled against plaintiff, finding that defendants were not acting in excess of their authority in attempting to hold a disciplinary hearing on the charges. She also found that defendants had a basis for issuing the orders. No further action was taken on these

charges.

On March 21 and/or 22, 1980, Linda Vaccaro was injured in an automobile accident while driving plaintiff's privately owned car. After this incident, plaintiff was charged with insubordination, consorting with persons of ill-repute, and conduct discrediting the department.

An administrative hearing was held April 21 and 22, 1980. The hearing officer, in a May 6, 1980 decision, found plaintiff guilty of insubordination but dismissed the two remaining charges for vagueness and overbreadth. On May 7, 1980, defendant Sheriff Andrew Meloni discharged plaintiff for insubordination. The termination was affirmed in a November 19, 1980, arbitration proceeding, in which it was found that the decision to discharge plaintiff was not arbitrary or capricious.

There is no dispute that, during this entire period, plaintiff continued to perform well in his duties as a deputy

sheriff.[1]

Procedural History

Plaintiff's complaint was filed September 1, 1982, in United States District Court, Western District of New York, before Honorable Michael A. Telesca. Judge Telesca granted a motion by defendants for summary judgment on February 18, 1983.

On appeal, the United States Court of Appeals for the Second Circuit vacated that judgment and remanded the case for further findings. Judge Telesca excused himself from the case, and the action was transferred to this court.

In the October 5, 1983, order remanding the action, the Second Circuit wrote the following:

> On the present state of the record, we cannot be entirely certain whether it was appropriate to enter summary judgment for the defendants. The decision of the Hearing Officer states that the orders of April 24, 1978, and July 7, 1978, prohibiting plaintiff from associating with Mrs. Vaccaro had a reasonable basis "when issued."

> However, the Hearing Officer also stated that "it does not appear from the record before me that they continue to have such a basis." (Emphasis in original.) It is not clear whether a reasonable basis for discharging plaintiff had ceased to exist only as of the date of the Hearing Officer's decision, May 6, 1980, or also as of the earlier time in March 1980 when plaintiff was in the company of Mrs. Vaccaro at his residence and at the Genesee Hospital. . . . If the orders that plaintiff violated remained reasonable through the time of the March 1980 episode and did not become unreasonable until some time thereafter, then there would be no question that his discharge was lawful. However, if those orders had ceased to be reasonable on March 21 and 22, 1980, then the issue arises whether plaintiff was validly found guilty of insubordination.
>
> * * *
>
> Our remand is without prejudice to a renewed motion for summary judgment upon a clarified record. There may well be undisputed facts upon which a determination can be made whether the 1978 orders were reasonable in March 1980.

Item 17 (emphasis added).

Discussion

Initially, it should be noted that defendants' claim this action is barred by collateral estoppel and res judicata based on

Judge Pine's July 1979 decision denying plaintiff's request for a writ of prohibition. It may be that her decision of July 24, 1979, would have some preclusive effect as to the constitutionality of the orders in 1978 and 1979. This court need not decide that, however, since Judge Pine could not decide at that time whether the orders continued to be constitutional in March of 1980. Her decision has no bearing on that determination.

Plaintiff claims that his discharge violated his rights to privacy and free association under the first and fourteenth amendments to the United States Constitution. Pursuant to the instructions of the Second Circuit, this court must determine whether the orders prohibiting plaintiff from associating with Linda Vaccaro were still reasonable, and therefore lawful, in March, 1980.

The only new addition to the record

by defendants is the February 27, 1984, deposition of defendant Sheriff Andrew Meloni.[2] In his deposition, defendant Meloni noted that Angelo Vaccaro was incarcerated and recently convicted at the time of the final set of charges was filed in March of 1980 (see Meloni deposition, Item 22, p.11). When questioned as to his opinion of whether the department would have a continuing interest in Linda Vaccaro subsequent to Angelo Vaccaro's conviction, the Sheriff responded, "Quite possible." (Item 22, p.12.) When asked to elaborate, the Sheriff explained:

> There's no question in our mind that she was still associating with people who, again, allegedly were mobsters in this community. In that sense, I felt the association of Deputy Baron with Linda Vaccaro was truly bringing discredit to the department, and he was putting himself in the position of exploitation. He had access to information, he had access to the license plates and criminal histories and files in this organization and, I felt, was exposed by his association with the person who had been acknowledged to have kept the company of alleged mobsters in this community.

* * *

> (H)e had what every other deputy would have had: a great deal of access to a pool of information that could be sensitive . . .

Item 22, pp.13, 20.

It is important to note that, although the Organized Crime Task Force had been disbanded by 1980, there was still an ongoing investigation into organized crime, in which the Monroe County Sheriff's Department was actively involved (Item 22, p.19).

Plaintiff does not dispute that the Monroe County Sheriff's Department was involved in investigations into organized crime activity in 1980. Nor does he dispute that, as a deputy sheriff, he had access to the criminal history files and the investigative files of the Sheriff's Department.

Nor does plaintiff dispute that, at the time of the accident in March, 1980, Linda Vaccaro was still the wife of Angelo

Vaccaro. Although Angelo Vaccaro had just instituted divorce proceedings against Linda, the two were legally married until June, 1980. Plaintiff does not dispute that Linda Vaccaro was present at Angelo's January, 1980, trial (Hearing Transcript, p.91), or that she visited him during his incarceration (Item 22, p.14).

Finally, although defendant Meloni acknowledged that plaintiff had been properly carrying out his duties (Item 22, p.10), the Sheriff believed that plaintiff's association with Mrs. Vaccaro limited the areas to which he could be assigned. Defendant Meloni flatly stated that he would not place plaintiff in the detective division or give him any investigative or organized crime assignments (Item 22, pp.20-21).

Based on all of the above, the court cannot find that the orders were in any way unreasonable on March 21 and 22, 1980, or that Sheriff Meloni unreasonably enforced them. Plaintiff was a deputy sheriff with

the Monroe County Sheriff's Department and, as such, had access to various investigative files. As Sheriff Meloni pointed out, the department was still actively involved in organized crime investigations. Plaintiff had been ordered not to associate with the wife of a then-convicted organized crime leader. Although divorce proceedings had begun at that point, Linda Vaccaro was still married to Angelo Vaccaro. She had appeared frequently at his trial two months before the 1980 incident. She was known to be associating with suspected organized crime members. Under the circumstances, it was reasonable for defendant Meloni to find that plaintiff was putting himself in a tenuous position, a position which might invite exploitation and discredit the department.

Since the orders were reasonable on March 20 and 21, 1980, as shown by undisputed facts provided by defendant Meloni, plaintiff's discharge was lawful. (See Order of the Second Circuit, Item 17.)

After the action was remanded to this court, plaintiff filed an amended complaint, in which he raised a new cause of action: a violation of his procedural due process rights under the fourteenth amendment (Item 27).

Although plaintiff states that he did not have an opportunity to be heard, there was a two-day hearing held on April 20 and 21, 1980. Plaintiff was represented by counsel. The crux of plaintiff's complaint seems to be that he was denied the right to be heard before the "ultimate decision-maker" -- in this case, Sheriff Meloni.

Defendant Meloni admits that he did not read that transcript of the hearing before reaching his decision to terminate plaintiff. Yet, he was aware of the hearing officer's dismissal of two charges and of the finding that plaintiff was guilty of insubordination. He was also aware that the hearing officer recommended leniency (Item 22, p.15). Yet, he terminated plaintiff, because he

routinely terminated anyone who was found guilty of insubordination (Item 22, p.16).

Plaintiff had a full and fair hearing. Defendant Meloni accepted the findings of the hearing officer as to plaintiff's guilt on each of the charges. He discharged plaintiff, which was within his discretion. This discharge was affirmed by arbitration. In no way was plaintiff denied due process.

Defendants' motion for summary judgment is granted. The complaint is dismissed, and judgment shall be entered for defendants.

So ordered.

JOHN T. CURTIN
United States District Judge

Dated: January 17, 1985

FOOTNOTES

1 Plaintiff married Linda on July 13, 1980. They are now divorced.

2 Plaintiff stated that he had nothing further to add to the record.

The factual data relied upon by Plaintiff is contained in the documents already on file in the United States District Court Clerk's Office. There are no further exhibits or documents being submitted by Plaintiff at this time.

Item 25, 3.

APPENDIX B

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 12th day of August one thousand nine hundred and eighty-five.

PRESENT:

HONORABLE WILFRED FEINBERG,
Chief Judge

HONORABLE J. EDWARD LUMBARD,

HONORABLE JON O. NEWMAN,
Circuit Judges.

----------x

ROBERT G. BARON,

Plaintiff-Appellant,

- against - 85-7145

ANDREW P. MELONI, et al.,

Defendants-Appellees.

----------x

Appeal from the United States District Court for the Western District of New York.

This cause came on to be heard on

the transcript of record from the United States District Court for the Western District of New York, and was taken on submission.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the judgment of said district court is AFFIRMED.

1. On October 5, 1983, this court entered an order vacating the judgment of the district court, which had granted defendants' motion for summary judgment, and remanding for clarification. Jurisdiction over any subsequent appeal was retained.

2. After the remand, the record was supplemented by defendant Meloni's deposition and clarified. On January 17, 1985, the district court granted defendants' renewed motion for summary judgment.

3. Plaintiff has again appealed. On the basis of the record now before us, for the reasons stated by Chief Judge John T. Curtin in his decision and order of January 17, 1985, we are satisfied that the orders violated by appellant were reasonable and therefore lawful on March 21-22, 1980, when he disobeyed them.

4. We have also reviewed appellant's other claims and find them to be without merit.

5. The judgment of the district court is affirmed.

WILFRED FEINBERG, Chief Judge

J. EDWARD LUMBARD,

JON O. NEWMAN,

Circuit Judges.

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

APPENDIX C

In the
UNITED STATES COURT OF APPEALS
For the Second Circuit

ROBERT G. BARON,

Plaintiff-Appellant,

-vs-

ANDREW P. MELONI, Individually and as sheriff of the County, and THE COUNTY OF MONROE,

Defendants-Appellees.

On Appeal From the
United States District Court for the
Western District of New York
No. 82-816C

Examination Before Trial, held at the office of JOHN D. DOYLE, ESQ., County Attorney, 307 County Office Building, Rochester, New York, on February 27, 1984, commencing at 10:14 a.m.

APPEARANCES: LIPSITZ, GREEN, FAHRINGER, ROLL, SCHULLER & JAMES, ESQS.
One Niagara Square
Buffalo, New York 14202
Appearing on behalf of the Plaintiff-Appellant
BY: FRANK S. KEDZIELAWA, ESQ., of Counsel

JOHN D. DOYLE, ESQ.
County Atorney
307 County Office Building
Rochester, New York 14614
Appearing on behalf of the
Defendants-Appellees
BY: NIRA T. KERMISCH, ESQ.,
of Counsel

REPORTED BY: DEBBIE C. MERRITT, RPR
Midtown Reporting Service
501 Times Square Building
Rochester, New York 14614
(716) 325-2130

I N D E X T O W I T N E S S E S

WITNESS	EXAMINED BY	Pages
Andrew P. Meloni	Mr. Kedzielawa	
" " "	Mrs. Kermisch	

MRS. KERMISCH: It is hereby stipulated by and between the attorneys for the respective parties that the presence and oath of the referee be waived;

It is further stipulated that all objections, except as to the form of the question, be reserved to the time of the trial;

And it is further stipulated that Debbie C. Merritt, Notary Public, may swear in the witnesses.

MR. KEDZIELAWA: So stipulated.

A N D R E W P. M E L O N I, Defendant-Appellee, called herein as a witness, having first been duly sworn, was examined and testified as follows:

EXAMINATION BY MR. KEDZIELAWA:

Q. Sir, when did you first start with the department?

A. March 1, 1954.

Q. Skipping a few years to 1978, what position did you hold with the department in that year?

A. In '78, I was not with the department. I had a six-year absence from January 1, 1974 through January 1, 1980.

Q. May I ask where you were employed in 1974.

A. Yes, sir. In '74, through '77, I was Public Safety Administrator for the County of Monroe; and I believe -- in March of '77, I was appointed Security Director for the University of Rochester, until becoming Sheriff in January of '80.

MRS. KERMISCH: You were elected Sheriff.

THE WITNESS: Well, I became it too.

MRS. KERMISCH: True.

MR. KEDZIELAWA: That was my next question.

Q. Did Sheriff Lombard retire, or did he run for re-election and --

MRS. KERMISCH: He was defeated.

A. I defeated the Sheriff in the election of '79.

Q. May I ask when you were first aware of a verbal order having been given to the Plaintiff, Robert Baron, with regards to his relationship with Linda Vaccaro?

A. Before I became Sheriff, actually.

Q. All right.

A. During the election, obviously I became somewhat aware of what had been going on in the department during my absence; and in that process, I learned of the order to Deputy Baron.

Q. Were those orders put in writing, or was your understanding that they were strictly verbal?

A. It was my understanding there was an order from Sheriff Lombard. I didn't question whether it was verbal or in

writing.

Q. Did you ever read the transcript of the hearing on the three charges -- I believe the hearing was in 1980 -- the transcript from the Hearing Officer?

A. No, sir, I did not.

Q. Could you state for us your understanding as to the primary reason why Sheriff Lombard gave this verbal order?

A. Apparently Deputy Baron was seen in the company of Linda Vaccaro on a number of occasions, either through surveillance or by a direct witness reporting to Sheriff Lombard. That is basically what the order was about; that he, as a Deputy Sheriff, was in the company of a woman whom Sheriff Lombard felt was bringing discredit to the department.

Q. Did you know that there was an Organized Crime Task Force in existence in 1978 --

A. I did.

Q. (Continuing) -- and that they were

trying to locate Angelo Vaccarc, who was then Linda's husband?

A. Yes, sir.

Q. Do you know whether or not the order would have been issued if there was no Task Force in existence in 1978?

A. I believe so, I don't believe the facts would have changed.

Q. And you have not read this --

A. No, sir.

Q. (Continuing) -- the transcript of the hearing?

A. No, sir.

Q. Do you know former Chief of Detectives Yazback?

A. Yes, sir.

Q. I do not recall his first name.

MRS. KERMISCH: Anthony.

A. Anthony.

Q. So therefore, you would not know that in the hearing transcript he said that if the Task Force had not been in

existence, he had his doubts as to whether the order would have been issued.

A. Well, the facts remain the same. I don't believe whether there was a Task Force or not would have altered Linda Vaccaro's image in the community and Sheriff Lombard's request not to have Deputy Baron associate with her. I don't believe that.

Q. Did you know that at a prior hearing there was some testimony that Deputy Baron's association with Miss Vaccaro has caused some tensions with the District Attorney's Office at that particular point in time? Were you aware of that?

A. Yes, I am.

Q. And that the District Attorney had expressed some concern at the time with the integrity of this surveillance or attempt to locate Angelo Vaccaro --

MRS. KERMISCH: Form -- Oh, I am sorry,

finish your question.

Q. (Continuing) -- and in trying to locate him, they were following and surveilling Linda Vaccaro, and that is how they learned of Deputy Baron's relationship?

A. Yes, sir.

Q. Is it your understanding that perhaps the order was issued, the order by Sheriff Lombard was issued at the insistence of or at the request of the District Attorney's Office?

A. That's very difficult for me to comment upon. I wasn't there. I don't know.

Q. Do you know whether or not prior to March 21, 1980, which is the specific incident, the auto accident with --

A. Yes, I understand.

Q. Do you know prior to that date, prior to the accident, if Deputy Baron obeyed the order?

A. Yes, I -- There was rumor that -- there were a number of people in our department

who felt that he was not, but there was no clear-cut evidence, a witness' statement to me or anybody else in the department saying that he was not.

Q. When you became Sheriff, were you aware that there were two prior sets of charges?

A. Yes, sir.

Q. Was there any specific reason why you did not direct the pursuit of those charges when you --

A. One of the charges, on the advice of my counsel -- one of the charges was still pending in the Court of Appeals, I believe, or the Appellate Court; and on --

MRS. KERMISCH: Court of Appeals.

A. (Continuing) -- and on that basis, we wanted to wait until there was a decision from that court, in terms of the direction we would take thereafter.

Q. Speaking with regards to the incident in March of 1980, who decided what charges

would be brought against Deputy Baron?

A. In my organization, the decision to bring charges is always a collective one. It's based on a meeting held with Internal Affairs, the captain of the zone from where he is currently employed, my undersheriff, the Chief of Detectives, and in this case I believe the District Attorney was involved too. The Chief of Detectives was Anthony Yazback.

Q. He was still Chief at that time?

A. Yes, he was.

Q. Prior to this auto accident in 1980 with Linda Vaccaro using Deputy Baron's car, had you received any communications from the District Attorney's Office regarding Robert Baron and Linda Vaccaro?

A. Verbal communication; nothing in writing -- or oral comunication, I should say. Simply, "What's happening with Baron" What's going on in this matter" and in

that sense. Nothing formal; informal.

Q. What was your reply to the District Attorney?

A. We were waiting for the Appellate Court to make a decision on this matter.

Q. So their inquiry was with regards to the prior charges?

A. Yes, what was happening with the charges. There was a lot of concern about where we were going with this matter.

Q. Would you say that there was any tension at that time between the District Attorney's Office and your office regarding Deputy Baron still being on the force up to March of 1980?

A. I think concern may be a better way to describe the relationship of the District Attorney and the present Sheriff. I think that would be a better way to describe it.

Q. Are you aware of some correspondence to your office from I think it is an Assis-

tant District Attorney in early 1980, I believe it was January, praising Deputy Baron and a number of other deputies for their fine work --

A. Yes, sir.

Q. (Continuing) -- in a number of zones? Do you recall that?

A. Yes.

Q. So you also had some positive comments regarding Deputy Baron --

A. Sure.

Q. (Continuing) -- from the Sheriff's Department?

A. Sure, as I would expect.

Q. Do you recall whether or not Angelo Vaccaro had been convicted or incarcerated at the time the charges were filed in 1980?

A. Yes, he was.

MRS. KERMISCH: I do not know.

A. I believe he was, Now, time frames here -- In my opinion at this point, he was

convicted, yes.

Q. Were you aware that in 1978 Internal Affairs of the Sheriff's Department had investigated Robert Baron regarding his relationship with Linda Vaccaro?

A. Yes, sir.

Q. And you are aware that it showed that he had no contact with Angelo Vaccaro?

A. I -- I can remember specifically discussing that file. I don't recall the specifics of the file. I don't -- I couldn't answer that question.

Q. So you would not recall that the polygraph tests corroborated the fact that he had no contact with Angelo Vaccaro.

A. I don't really recall that, Frank.

Q. And similarly, the polygraph test showed that at least as of 1978, he had no sexual relations with Linda Vaccaro.

MRS. KERMISCH: Objection as to form.

A. That's something I couldn't answer.

Q. Sheriff, would it be your opinion that

the department would have an an interest in Linda Vaccaro subsequent to the conviction or incarceration of Angelo Vaccaro?

A. Quite possible. Again, very difficult to determine or predict, but quite possible.

Q. So at that time, do you recall having a specific interest in her whereabouts or in continuing a surveillance of her once her husband had been apprehended and convicted?

A. Well, if you are suggesting to me was she a target --

Q. Yes.

A. Well, I think she just came under surveillance. I'm not sure she was a target.

Q. This order to refrain from contact or association with Linda Vaccaro, what would you say was the purpose behind it once, say, her husband had been

incarcerated?

A. Through -- We are going back to "78 or "77 now, but through intelligence-gathering and a great deal of information gathering by people not only in the Task Force, but others in law enforcement, Linda Vaccaro was identified as a person who had associations not only with, obviously, her husband, Angelo, but other members of alleged organized crime, people in this community.

Q. But after, say, her husband had been incarcerated in 1980, would that still be the same reason or basis --

A. Yes.

Q. (Continuing) -- for the order?

MRS. KERMISCH: Can you elaborate on that -- Do you mind if I just ask him to fill in the gap?

MR. KEDZIELAWA: Sure.

MRS. KERMISCH: (Continuing) -- as to the reason why --

THE WITNESS: There's no question in our mind that she was still associating with people who, again, allegedly were mobsters in this community. In that sense, I felt the association of Deputy Baron with Linda Vaccaro was truly bringing discredit to the department, and he was putting himself in the position of exploitation. He had access to information, he had access to the license plates and criminal histories and files in this organization and, I felt, was exposed by his association with the person who had been acknowledged to have kept the company of alleged mobsters in this community.

Q. You do not have --

MRS. KERMISCH: Could I ask one more question?

MR. KEDZIELAWA: Sure, go ahead.

MRS. KERMISCH: To your knowledge, did she visit her husband in jail?

THE WITNESS: Yes, she did.

MRS. KERMISCH: To your knowledge, she kept in contact with him --

THE WITNESS: Oh, yes.

MRS. KERMISCH: (Continuing) -- even when he was incarcerated?

THE WITNESS: Yes, oh, yes. We have visitation records.

Q. But you have nothing to show any specific attempts to exploit Deputy Baron by members of organized crime.

A. I have nothing to suggest that that has occurred. My concern, as it is with every deputy, is that their exposure to that form of exploitation is quite limited or non-existent.

Q. At the time of this incident in March of 1980, did you have any phone calls from the public criticizing the department? Can you recall any phone calls or a rash

of phone calls? Just to the best of your recollection.

A. Oh, people outside of the system, the criminal justice system?

Q. Yes, the general public.

A. No.

Q. Do you recall any public criticism, say, like in newspaper editorials?

A. I certainly recall a great deal of coverage on the issue; and I guess, by interpretation, if one would have to deem whether that was to the credit or to the discredit of the organization, I sensed it was to our discredit.

Q. Again, I would ask you, this Hearing Officer's transcript on the charges brought against Deputy Baron, did you review it prior to discharging --

MRS. KERMISCH: You already asked that several times.

A. No, I did not.

Q. You are aware then that he was found

guilty on one of the charges.

A. Yes.

Q. And that was of insubordination?

A. Yes.

Q. The Hearing Officer had recommended leniency; you are aware of that?

A. Yes.

Q. Can I ask your reasons why you did not give a lenient sentence?

A. First of all, I believe insubordination may be the most serious charge in the book. My history, as Sheriff, with insubordination has been termination. When an officer in my organization deems it appropriate to disobey an order that a legitimate command officer has given, I sense that's the beginning of the breakdown of discipline, and discipline in this organization is essential. In that sense, I felt it was that serious to deem termination.

Q. Other than this incident with Linda

Vaccaro, say, in March of 1980 and his relationship with her, was Deputy Baron performing his duties adequately?

A. Yes.

Q. You know of no other reasons, say, in his personnel file that he would be discharged for or disciplined other than that incident.

A. No.

Q. Did you ever work with him in the department?

A. Well, side-by-side, no, sir. Certainly I was his boss, as I was undersheriff when I left the organization, second in command; and in that sense, he's worked for me. I believe he's been on since 1970, I believe, '71.

Q. Other than this incident or relationship with Linda Vaccaro, can I ask you if he had a reputation within the department and what that was?

A. Remember, now, I was gone six years --

Q. Sure.

A. (Continuing) -- so, you know, that means the last six years, I don't know what he was doing.

MR. KEDZIELAWA: I will withdraw the question then.

Q. Are you aware that he and Linda are now divorced?

A. Yes sir -- At least, I've been told that. I'm not sure it's fact.

Q. Well, they have.

A. Okay.

Q. Outside of this incident of insubordination, you know of no other reason why, say, the department would not re-hire or another department in the law enforcement agency would not re-hire or hire Deputy Baron?

A. I -- I wouldn't comment on that because I don't think it's my place to talk about re-hiring at this point.

MR. KEDZIELAWA: That is basically all I have. If you have some --

MRS. KERMISCH: I have a couple of questions.

EXAMINATION BY MRS. KERMISCH:

Q. In 1980, when you were elected Sheriff, were Mr. Baron's activities of any concern in the department?

A. Absolutely, yes.

Q. Who was concerned with his activities as relating to Linda Vaccaro?

A. We talked about the District Attorney earlier, and we talked about other police agencies commenting; and certainly, there were rumors and vibes going through the organization. This was a very dificult time in the Sheriff's Department. We had just gone through a series of two years of headlines in terms of alleged improprieties and wrongdoings, and this just catapulted. It was an embarrassment. A lot of the deputies wanted to know what was going on and why wasn't he being terminated. It was a general consensus in the organization that things were moving somewhat slowly with Mr. Baron.

Q. You stated that in addition to the concern within the department, there was also concern outside the department.

A. Yes.

Q. And that was specifically regarding his relationship --

A. -- with Linda Vaccaro, yes, ma'am.

Q. When a determination was made to bring charges against him, will you state again what the concerns were regarding his associations with Linda Vaccaro?

A. Well, certainly one, the obvious is the discredit it brings to the department with the headlines that were being made. More importantly though, I believe every deputy has the right -- has the obligation, rather, not to expose himself to associations with people who could exploit his potential to gather information or intelligence. Given the fact that we were heavily involved in organized crime investigations at the time, I felt his association with a

person who had been identified and seen with alleged organized crime figures in this community was an exposure that I could not tolerate.

Q. In 1980, to your knowledge, was there an ongoing investigation into the organized crime activities in this area?

A. Absolutely.

Q. And that was even though the Task Force on organized crime had been disbanded?

A. Oh, yes.

Q. Was you department involved in that?

A. Yes, ma'am.

Q. Did Deputy Baron have any access to information regarding such investigation, or could he have had such access?

A. He certainly could. We talked about the general information base that's available to every deputy. That could be a license plate, a registration check, a records check, access to all of our criminal history files within the organization, access to any on-hand

investigative file that would be in the Records or CID divisions; and in that sense, he had what every other deputy would have had; a great deal of access to a pool of information that could be sensitive -- or, depending on how it was used, could be sensitive. A license plate is not a sensitive piece of data. In the wrong hands, it can be a very sensitive piece of data.

Q. Did you have any feelings regarding assignment, as far as Deputy Baron was concerned, in regard to his relationship? In other words, did you feel that you would be limited in the areas to which he could be assigned --

A. Absolutely.

Q. (Continuing) -- as he was associated with her?

A. Absolutely. I would not have put him in plain clothes or in the detective division based on the exposure he had with Linda Vaccaro.

Q. Therefore, would it be fair to say that you felt that your hands would be tied --

MR. KEDZIELAWA: Object to the form of the question.

MRS. KERMISCH: (Continuing) -- or his superior's hands would be tied in an assignment?

A. (No response.)

Q. That is okay, you can answer it.

THE WITNESS: Can I answer it?

MR. KEDZIELAWA: Yes.

A. I -- I felt strongly that his diversity as far as a police officer is concerned was quite limited on the basis of the evidence I had in hand, that he was seen with a person who had ties with organized crime figures.

Q. How would you consider then his effectiveness in the department, the performance of his duties in the department?

A. Limited in scope, certainly to look at the uniform aspect only; and certainly, never to have graduated to an organized crime assignment per se or investigative assignment per se -- well, intelligence gathering is part of the process.

Q. As to Linda Vaccaro, are you familiar with her history?

A. Certainly not in total. Basically, since I've become Sheriff, I've been familiar with --

Q. What do you know about Linda Vaccaro herself?

A. Well, Linda is --

MR. KEDZIELAWA: Object to --

A. (Continuing) -- or was --

MR. KEDZIELAWA: Object to the form of the question.

MRS. KERMISCH: What is wrong with the form of the question?

MR. KEDZIELAWA: Most of it is in the hearing transcript.

MRS. KERMISCH: He never testified though.

MR. KEDZIELAWA: No, but we already know about Linda Vaccaro from the Hearing Officer's transcript.

MRS. KERMISCH: No, we do not, not from him.

MR. KEDZIELAWA: But he does not know as much as what is contained in the transcript.

MRS. KERMISCH: Well, I do not know if he does not know as much as what is in here, but he has his own knowledge, and that is part of his consideration as to --

MR. KEDZIELAWA: It is a repetition of what we already have in the file, but I --

MRS. KERMISCH: I do not know what he is going to say.

Go ahead.

A. Well, based on my review of the facts as I came into office -- and you have to remember, it was only three months after I was in office that all of this

came about -- I was convinced that Linda Vaccaro had associates in this community and had been identified enough times with people who were alleged to be mobsters that --

Q. Do you know about her prior history; in other words, prior to marrying Angelo Vaccaro, whom she associated with?

A. Well, I think I -- Forgive me for going back to -- What year, for instance?

Q. Any time throughout her life.

A. Well, I've heard a number of stories about her prior history and her associations even before she married Angelo.

Q. Were you aware that she was a mistress to --

A. I was aware that she and Chirico were very close friends. Some would suggest closer than platonic, but yes.

Q. Who was Chirico?

A. He was an alleged -- Dominic Chirico was an alleged organized crime figure in this community, who has since left us.

Q. In what fashion did he leave us?

A. I believe he was murdered in 19 -- I don't remember the year.

Q. Do you know by whom?

A. (No response.)

Q. Do you know the circumstances of this murder?

A. Yes. She was present -- or she was seen just before the homicide took place with him.

Q. Do you know who the killers were?

A. I'm not --

Q. Or the alleged killers? You do not remember the names?

A. I don't remember the names.

MR. KEDZIELAWA: Now, you are not suggesting Linda was a witness to --

MRS. KERMISCH: No, I am not.

THE WITNESS: No, I'm not either.

A. I don't remember all the names.

Q. Was he killed by other alleged Mafia figures?

A. Oh, yes, yes, he was.

Q. That was during a power struggle?

A. Yes, in the City of Rochester.

Q. Are there any other factors that you would like to raise which went into the decision to bring the charges in 1980?

A. Well, I think it's important to understand that the decision was based on a great deal of communication with other members of my organization. This was not a unilateral decision by the Sheriff, as none of these decisions, in terms of discipline, are in my organization.

Two, the challenge of the Sheriff by his constituency at this point was to remove the cloud that had been placed over this department; and certainly, to have one of my deputies associate with a woman who had been identified as being close to a number of organized crime figures was keeping that cloud over the department's head.

Insubordination, as I had said before, is the most serious charge I would consider any deputy being brought up on; and in that sense, I handled this matter seriously.

Those are the three factors that I thought were very important in this decision.

Q. Let us discuss the cloud a little bit. When you took office, you beat Sheriff Lombard?

A. Yes, ma'am.

Q. One of the reasons, I think it would be fair to assume, was the cloud that was over the department.

MR. KEDZIELAWA: I object to the question. Why someone wins or loses an election is --

MRS. KERMISCH: Well, I think that is --

MR. KEDZIELAWA: It is speculation why people win or lose an election.

MRS. KERMISCH: In this case, I do not think it is.

MR. KEDZIELAWA: Well, you cannot state that for a fact.

MRS. KERMISCH: Well, in addition to Mr. Meloni's obvious charm.

MR. KEDZIELAWA: He can give an opinion.

A. In my opinion --

MRS. KERMISCH: Let me withdraw this question.

Q. Can you discribe some of the problems that were in the department during the last five years prior to your election --

A. Yes, ma'am.

Q. (Continuing) -- from '74 to '79?

A. Well, as you know, the department had done a wonderful job in bringing a lot of the alleged mobsters to trial and conviction, and part of the process was some alleged tampering with evidence, and that brought the beginning of a series of allegations against the department, and it went downhill from

there: three deputies had been arrested for burglary; another deputy had been arrested for stolen hubcaps; there were stories and allegations about improprieties as it related to how the mobsters who were in custody, federal witness custody in the jail, were handled; missing property. This series went on and on by the Gannett press about all of the kinds of things that were going on in the Sheriff's Department.

Q. And that finally came to a head in what years?

A. In -- It started in '77; came to a head during the election, obviously, of '79, politically speaking anyways, and --

Q. So between '77 and seventy -- '80.

A. '79.

Q. (Continuing) -- and December of '79, all this --

A. Right, the headlines were -- acknowledgements of alleged improprieties were headlining the Gannett press every day.

That took a terrible, terrible toll on the organization. There was a great deal of distrust; our self-worth, our self-image went to hell, and I took over, you know, a psychologically depressed organization after such a thing, but it was --

Q. Did you vow to --

A. My charge was and my campaign theme was to return credibility and remove the cloud. And certainly, you know, I -- I think, when you talk about winning or losing, I didn't win the election; I think my predecessor lost it, and I think that's a better word to describe what happened.

Q. Your concern was to have a department that would be --

A. -- as clean as a hound's tooth and no corner cutting. One of the things that I have told every class of deputies that I've ever recruited and hired since 1968

was basically that they are deputy sheriffs 24 hours a day; that I expect their off-duty behavior to be as honorable and with as much integrity, which is obvious to the community, as when they're on duty eight hours; that there's no distinction between off-duty and on-duty time as it relates to the image and especially the perception they give the public. That speech I have given to every sheriff's deputy, whether he be civil, jail or police bureau, since I've been an undersheriff and handled recruiting. And in that sense --

Q. Was that speech also given to Deputy Baron?

A. Absolutely.

Q. And he was aware of it?

A. Absolutely.

MRS. KERMISCH: That is all I have.

EXAMINATION BY MR. KEDZIELAWA:

Q. This time period you just spoke of between 1977 and '80, when the department was psychologically depressed, I think you said --

A. Yes.

Q. (Continuing) -- you were not with the department at that time, is that correct?

A. No, sir.

Q. So your knowledge of what was going on in the department relied upon what other people were telling you.

A. Yes, sir.

Q. Including newspaper headlines?

A. Yes, sir.

Q. Also, with regards to Deputy Baron's duties, was he ever assigned plain-clothes duties that you can recall?

A. I don't recall.

Q. Was he ever a detective?

A. No, he was not.

Q. Did he ever express a desire to become a detective, to the best of your recollection?

A. Not while I was in office. I think prior to he may have.

Q. Did he ever request plainclothes duty, to the best of your recollection?

A. While I was Sheriff or --

Q. Yes.

A. (Continuing) -- or before?

Q. Well, either, whatever you recall, when you were with the department or after you became Sheriff.

A. I don't remember.

Q. Is it true that one of the officers or superiors within your department who helped you make this decision regarding Deputy Baron was Anthony Yazback?

A. Yes, sir.

Q. Did he subsequently leave the department, the Sheriff's Department?

A. Yes, sir.

Q. Was that because he had been accused of a misdemeanor or shoplifting?

MRS. KERMISCH: I am not going to allow him to answer that.

MR. KEDZIELAWA: Well, we just discussed other deputies in the department who left because of criminal allegations or rumors.

MRS. KERMISCH: It has nothing to do with that.

MR. KEDZIELAWA: Well, he can answer the question.

MRS. KERMISCH: No, he cannot. There were no names mentioned.

MR. KEDZIELAWA: Yes, he can.

MRS. KERMISCH: No, I am not going to let him answer the question. He was never convicted, okay, therefore --

Q. Was he accused of any misdemeanor activity that you recall?

MRS. KERMISCH: Was he?

A. Yes.

MR. KEDZIELAWA: I will settle for that. That is fine. I think that is all I have, Sheriff.

(Whereupon the Examination Before Trial adjourned at 10:55 a.m.)

STENOGRAPHER'S CERTIFICATION

STATE OF NEW YORK :

COUNTY OF MONROE :

I, DEBBIE C. MERRITT, being a registered professional reporter in the State of New York, do hereby certify that I reported in stenotype shorthand the deposition of Andrew P. Meloni on the 27th day of February, 1984, that the witness was sworn; and that the foregoing pages, numbered A-1 to A-62 were typed under my direction and control and constitute a true record of the deposition of the witness.

I further certify that I am neither attorney nor counsel for any of the parties nor a relative or employee of any attorney or counsel connected with the action; nor financially interested in the outcome of the action.

DEBBIE C. MERRITT, RPR

Dated at Rochester, New York

this 7th day of March, 1984.

Supreme Court, U.S.
FILED
NOV 27 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-771

In The

Supreme Court of the United States

OCTOBER TERM, 1985

ROBERT G. BARON,

Petitioner,

vs.

ANDREW P. MELONI, INDIVIDUALLY AND AS SHERIFF OF THE COUNTY OF MONROE, AND THE COUNTY OF MONROE,

Respondents.

On Petition for a Writ of Certiorari To the United States Court of Appeals Second Circuit

BRIEF IN OPPOSITION OF RESPONDENT COUNTY OF MONROE

CHARLES R. VALENZA
Attorney for Respondent
39 West Main Street
Rochester, New York 14614
Telephone: (716) 428-5280

Nira T. Kermisch, Esq.
Of Counsel

Daily Record Corporation
Rochester, New York
(12105)

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QUESTIONS PRESENTED

1. Whether two orders given to petitioner, a deputy sheriff, prohibiting him from associating with the wife of a reputed mafia leader violate petitioner's First and Fourteenth Amendment rights.

2. Whether orders given to petitioner not to associate with the wife of a reputed mafia leader violate his rights to privacy.

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In The

Supreme Court of the United States

OCTOBER TERM, 1985

ROBERT G. BARON,

Petitioner,

vs.

ANDREW P. MELONI, INDIVIDUALLY AND AS SHERIFF OF THE COUNTY OF MONROE, AND THE COUNTY OF MONROE,

Respondents.

On Petition for a Writ of Certiorari
To the United States Court of Appeals
Second Circuit

BRIEF IN OPPOSITION OF RESPONDENT COUNTY OF MONROE

The respondent, County of Monroe, respectfully requests that this Court deny the Petition for Writ of Certiorari, seeking review of the judgment of the United States Court of Appeals for the Second Circuit entered in this proceeding on August 12, 1985.

STATEMENT OF THE CASE

Petitioner, Robert G. Baron, was a deputy sheriff with the Monroe County Sheriff's Office until his termination in 1980 following a hearing wherein he was found guilty of insubordination. The charges arose from two orders given to petitioner in 1978 not to associate with Linda Vaccaro, the then wife of a reputed mafia leader in Rochester, New York.

On April 20, 1978, petitioner's patrol vehicle was seen in the driveway of reputed mobster Angelo Vaccaro's residence. At that time his residence and his wife, Linda Vaccaro, were under surveillance by the Organized Crime Task Force which observed the petitioner at that house from 1:00 a.m. until 5:00 a.m., during the hours when he was on duty.

The Task Force reported the matter to other law enforcement officials who immediately contacted the Sheriff's office and an investigation was conducted. When it was determined that Mr. Baron did indeed spend a lengthy period of time, while on duty, at the Vaccaro residence, he was ordered, on April 24, 1978, not to associate with Linda Vaccaro. Petitioner claimed, at that time, that he did not have any association with Linda Vaccaro, that he did not know her or her last name, and only stopped at her house to return a gold watch found at her workplace. In spite of the order not to associate with Linda Vaccaro and his claim that he did not know her, petitioner deliberately continued to associate with her. He was observed on three separate occasions in her company during the months of June and July of 1978. At that time, a second order was given to him not to associate with her. As a result of the disobeyance to the lawful orders, departmental charges were filed against him.

Petitioner then commenced a set of maneuvers which pushed the hearing on the charges beyond the thirty day time in which it was required to be heard, and then moved to dismiss the charges

on the ground that the hearing was not held within the required time. Petitioner lost and took the matter all the way up to the New York Court of Appeals which ruled against him on the ground that he was the moving force behind the adjournments. At that time he did not challenge the constitutionality of the orders given to him.

While the matter was being litigated in the courts, petitioner continued to associate with Linda Vaccaro and on April 13, 1979 a second set of charges was filed against him. Petitioner then moved in court in an attempt to stay the proceedings and when he lost he appealed, but never perfected his appeal. At that time plaintiff also challenged, in State Supreme Court, the constitutionality of the orders given to him. Judge Pine ruled against him and determined that the orders did not violate any of his rights. While this set of charges was pending, it came to light that petitioner was still associating and seeing Linda Vaccaro, who, on March 22, 1980, was involved in an automobile accident while driving petitioner's Lincoln Continental. Thereafter, on March 24, 1980, a third set of charges was filed against Mr. Baron. A hearing was then held on this last set of charges and once again petitioner raised the argument, before the hearing examiner, that the rules promulgated by the Sheriff were vague, broad and unconstitutional and could not be enforced. The hearing officer accepted this argument as to two of the rules but rejected the argument that the orders, which prohibited petitioner from seeing Linda Vaccaro, violated his civil rights. That was the second time that the question of the constitutionality of the orders was raised, argued and decided. Thereafter, the hearing officer found petitioner guilty of insubordination. Sheriff Meloni then fired the petitioner. Petitioner appealed from the decision of the Sheriff to terminate him and also moved in court for an order to limit the appeal to the question of the review of the termination of the petitioner and to prohibit the arbitrator from ruling on the merits of the case.

The court ruled that the review would be limited to the question of the termination. The arbitrator found that the termination was proper, was neither arbitrary nor capricious, and was based on good solid reasoning.

Petitioner then commenced this action in Federal Court. Defendants moved to dismiss, or in the alternative, for summary judgment before Judge Telesca, and he granted the motion. Petitioner then appealed and the Second Circuit reversed and remanded for discovery on the question of whether or not the orders of April, 1978 and July, 1978 were valid in March of 1980.

Sheriff Meloni was deposed and gave, in great detail, the reasons why the orders were valid.

Sheriff Meloni stated that petitioner's activities were of great concern in the department and outside. The Sheriff testified that in March, 1980, the investigation into the mob's activities was continuing, with the Sheriff's office actively participating, even though the Task Force on Organized Crime had been disbanded. (A-46) The Sheriff testified that Mr. Baron's activities relative to his relationship with Linda Vaccaro were affecting morale in the department and that petitioner's effectiveness was minimized as he could not be assigned to certain duties as a result of this association. He further testified that a deputy has an obligation not to expose himself to associations with people who could exploit his potential to gather information. (A-45)

Sheriff Meloni testified that even after Linda Vaccaro's husband had been convicted and incarcerated there was a reason for the order that Mr. Baron not have a relationship with Mrs. Vaccaro. The Sheriff explained that Linda Vaccaro was identified as a person who had associations not only with, obviously, her husband, Angelo, but other members of alleged organized crime in this community, and that she continued to associate with alleged

mobsters and also visited her husband in jail during her association with petitioner. (A-37) Sheriff Meloni stated that the association was bringing discredit to the department and that Mr. Baron was putting himself in a position of exploitation. The Sheriff testified that Mr. Baron had access to sensitive information. (A-38)

Petitioner did not dispute that the Monroe County Sheriff's office was involved in investigations into organized crime activity in 1980. Nor did he dispute that, as a deputy sheriff, he had access to the criminal history files and the investigative files of the Sheriff's office. (A 12-13)

Nor does petitioner dispute that, at the time of the accident in March, 1980, Linda Vaccaro was still the wife of Angelo Vaccaro. Although Angelo Vaccaro had, at that time, just instituted divorce proceedings against Linda, the two were legally married until June, 1980. Petitioner does not dispute that Linda Vaccaro was present at Angelo's January, 1980, criminal trial, or that she visited him during his incarceration.

The Sheriff also testified that he could not place petitioner in the detective division or give him any investigative or organized crime assignments. (A-13)

The respondents then brought a new motion for summary judgment, which was granted by Judge Curtin. Petitioner appealed and the Second Circuit affirmed on the decision of Judge Curtin. Petitioner then filed this petition for Writ of Certiorari to the United States Court of Appeals, Second Circuit.

SUMMARY OF ARGUMENTS

1. THE ORDERS DID NOT VIOLATE PETITIONER'S FIRST AND FOURTEENTH AMENDMENT RIGHTS.

The government may regulate and restrict certain constitutional rights of its employees. The regulations must meet a rational criteria to be upheld as constitutional.

2. THE ORDERS DID NOT VIOLATE PETITIONER'S PRIVACY RIGHTS.

Right of privacy pertains to intimate family matters. Two adults married to two others, respectively, do not fall under this protection.

3. NO CONFLICT EXISTS BETWEEN THE CIRCUITS REGARDING THESE QUESTIONS.

Petitioner attempts to rely on an Eleventh Circuit case to claim that a conflict exists between the Second Circuit and the Eleventh Circuit regarding the issues in this action. A review of the case cited by petitioner clearly indicates that the Eleventh Circuit did not decide the issues decided in this case.

ARGUMENTS WHY THE WRIT SHOULD BE DENIED

1. THE ORDERS DID NOT VIOLATE PETITIONER'S FIRST AND FOURTEENTH AMENDMENT RIGHTS

Petitioner alleges that, as a deputy sheriff, he has the right to free association with whomever he wishes and that an order which limits his association violates his right to free association.

The Supreme Court recognized the right of government to regulate and restrict certain constitutional rights of its employees. In

the case of *Meehan v. Macy* 392 F.2d. 822, (cited with approval in *Arnett v. Kennedy* 416 U.S. 134), an employee who printed and distributed defamatory Lampoon of Governor of Canal Zone was subject to discharge for that conduct. The court, at page 832, quoted Justice Holme's ruling in the case of *McAuliffe v. City of New Bedford* 155 Mass 216, 220 where he stated:

> "The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman."

The court in the *Meehan* case stated at 832:

> "Courts are increasingly re-examining and considering the issue whether and to what extent the Government's prerogative to employ or discharge permits it to regulate conduct of its employees that would, in the absence of the employment relationship, be protected from interference by the First Amendment."

The court then continued:

> "Government employees do, to some extent, have 'lesser rights' than others have under the constitution, since they may be required to suspend or refrain from certain activities (e.g. political campaigning) that are embraced within the constitutional rights of others, when such activities are reasonably deemed inconsistent with their public status and duties."

It is not only important that government and its employees in fact avoid practicing political activities, but it is also critical that they *appear to the public to be avoiding it,* if confidence in the system of representative government is not to be eroded to a disastrous extent. *United States Civil Service Commission v. National Association of Letter Carriers AFL-CIO* 93 S. Ct. 2880, 2890.

Justice White stated in upholding the constitutionality of the Hatch Act, which bars federal employees from participating in

any political activity, a strong restriction on their First Amendment right:

> "Neither the right to associate nor the right to participate in political activities is absolute in any event."

In the case of *York County Firefighters Assn. v. County of York Virginia, et al.* 589 F.2d. 775 (1978) a regulation prohibiting belonging to a union by supervisors in a fire department was upheld by the court as constitutional and the court stated at 778:

> ". . . *a first amendment right to associate may be validly limited where the limitation is necessary to a substantial and legitimate state interest. An efficient fire department is a legitimate and substantial interest because of the need of firefighters to act quickly and efficiently* . . . and the limitation on membership, is necessary in order to forestall a division of the supervisors loyalty between the union and their employer." (emphasis supplied)

The court also found that the supervisors could belong to other unions which would not create the problems cited.

In our case it is obvious that association with the wife of a reputed mob leader can create a conflict of interests and can have a devastating effect on the public's confidence in the department and create a conflict of interests between the deputy and the department.

In *Kelley v. Johnson* 424 U.S. 238, a regulation regulating hair length of police officers, was upheld by the court on the ground that:

> "More recently, we have sustained comprehensive and substantial restrictions upon activities of both federal and state employees lying at the core of the First Amendment. *Civil Service Commission v. Letter Carriers* 413 U.S. 548; *Broadrick v. Oklahoma* 413 U.S. 601. If such state regulations may survive such challenges based on the explicit language of the

> First Amendment, there is surely even more room for restrictive regulations of state employees where the claim implicates only the more general contours of the substantive liberty interests protected by the Fourteenth Amendment." (Id 245)

In the *Kelley* case the court suggested that the state may have a greater regulatory power over the activities of its police officers by virtue of their special paramilitary nature, than the state would have over its other employees. (at page 248-249)

The *Kelley* court established a rational criteria to be applied in determining the constitutionality of the challenged orders rather than a compelling state interest. Thus, if the orders are found arbitrary it would constitute a deprivation of constitutional rights, but if found to be rational, would be upheld as constitutional. See also *Yonker v. Gully* 536 F.2d. 184.

In our case, the petitioner, a deputy sheriff, is challenging orders forbidding him to associate with the wife of a leader of a mafia faction involved in serious crimes, who was under surveillance and charged with serious crimes and whose activities appeared as headlines in the local newspapers.

The purposes of the challenged regulations are, among others: (1) to insure public confidence in members of its law enforcement body by avoiding the appearance of having deputy sheriffs appear to be conspiring with criminals, whether directly with the criminals or through their close relatives; (2) to prevent exploitation of the deputies; (3) to prevent the temptation to deputy sheriffs to look the other way when their criminal friends or their friends' relatives violate the law; (4) to prevent the temptation and opportunity for deputy sheriffs to take bribes from criminals, either directly or through their close relatives; (5) to preserve the integrity and effectiveness of the criminal judicial system by preserving the credibility of deputy sheriffs' testimony at

criminal trials; (6) to preserve the integrity of the department and the individual officers therein; (7) to promote confidence by the public in the Sheriff's office; and (8) to avoid any appearance of impropriety in the Sheriff's office.

The purposes of the challenged orders rebut any claim that the regulations are not rationally connected to the legitimate objectives they seek to obtain. The regulations are designed to maintain an uncorrupt police force and to maintain public confidence in its police force, to avoid the appearance of an impropriety on the part of the police officers, and to prevent a situation where a deputy may find himself in a position of conflict of interests, or subject to pressure to provide sensitive information to his friends.

The same reasoning applied to also and in particular, in 1980. At that time, Sheriff Meloni took office and charge of a sheriff's department which had just gone through a series of two years of headlines in newspapers, in terms of alleged improprieties and wrongdoings. Many deputies wanted to know what was going on with Mr. Baron and why he was not being terminated. There was a general consensus in the organization that things were moving somewhat slowly with Mr. Baron. (A-44)

Sheriff Meloni testified as to what happened in the department just prior to his taking over. He stated (A 55-58):

> A. Well, as you know, the department had done a wonderful job in bringing a lot of the alleged mobsters to trial and conviction, and part of the process was some alleged tampering with evidence, and that brought the beginning of a series of allegations against the department, and it went downhill from there: three deputies had been arrested for burglary; another deputy had been arrested for stolen hubcaps; there were stories and allegations about improprieties as it related to how the mobsters who were in custody, federal witness custody in the jail, were handled; missing prop-

erty. This series went on and on by the Gannett press about all of the kinds of things that were going on in the Sheriff's Department.

Q. And that finally came to a head in what year?

A. In — It started in '77; came to a head during the election, obviously, of '79, politically speaking anyways, and —

Q. So between '77 and seventy — '80.

A. '79.

Q. (continuing) — and December of '79, all this —

A. Right, the headlines were — acknowledgements of alleged improprieties were headlining the Gannett press every day. That took a terrible, terrible toll on the organization. There was a great deal of distrust; our self-worth, our self-image went to hell, and I took over, you know, a psychologically depressed organization after such a thing, but it was —

Q. Did you vow to —

A. My charge was and my campaign theme was to return credibility and remove the cloud. And certainly, you know, I — I think, when you talk about winning or losing, I didn't win the election; I think my predecessor lost it, and I think that's a better word to describe what happened.

Q. Your concern was to have a department that would be —

A. — as clean as a hound's tooth and no corner cutting. One of the things that I have told every class of deputies that I've ever recruited and hired since 1968 was basically that they are deputy sheriffs 24 hours a day; that I expect their off-duty behavior to be as honorable and with as much integrity, which is obvious to the community, as when they're on duty eight hours; that there's no distinction between off-duty and on-duty time as it relates to the image and espe-

cially the perception they give the public. That speech I have given to every sheriff's deputy, whether he be civil, jail or police bureau, since I've been an undersheriff and handled recruiting. And in that sense --

Q. Was that speech also given to Deputy Baron?

A. Absolutely.

Q. And he was aware of it?

A. Absolutely.

Thus, the petitioner knew, as a condition of employment, that his behavior off duty must also be beyond reproach.

The question also remains whether petitioner, who was married at the time, had a constitutional right to "run around" with Linda Vaccaro, who was married at that time, and whether such right is a constitutionally protected right, and whether such right would be a protected right even had they not been married to others. In the case of *Wilson v. Swing* 463 F. Supp 555, two police officers, a male and a female, were having an extra-marital affair, and were directed not to see one another. They moved in court alleging that their First Amendment rights were being violated. The court stated at 563:

> "The court found that adulterous conduct may be restricted as it casts a poor light on the department as a whole; the morale and discipline within the department could suffer as a result of community disapproval. Adultery is not protected by First Amendment guarantee of freedom of free association (see *Griswold v. Connecticut* 381 U.S. 479; *Poe v. Ullman* 367 U.S. 497) nor by the Fourteenth Amendment."

The courts have recognized the First Amendment right to engage in association for the advancement of beliefs and ideals. The right is protected because it promotes and may well be essen-

tial to the 'effective advocacy of both public and private points of view particularly controversial ones' that the First Amendment is designed to foster. *N.A.A.C.P. v. State of Alabama* 357 U.S. 449; *Runyan v. McCrary* 427 U.S. 160.

In our case it is obvious that the association between Mr. Baron and Mrs. Vaccaro was for purposes other than the exchange of political or ideological ideas. Nor is petitioner claiming that the orders in any way inhibited him from joining with others to promote some psychological, political, scientific, cultural or religious beliefs. He was seeking instead the right to consort socially and for other reasons perhaps with an individual whom he knew had been the subject of police investigations and surveillance and who has been for many years, even prior to his beginning his association with her, associated with various leading mafia figures.

Such a right is not encompassed within the First Amendment right of free association.

Petitioner has attempted on several occasions to interpose his marriage, in July 1980, to Linda Vaccaro as a basis to his allegations of interference with that relationship. However, until June of 1980, long after the termination of petitioner from employment, Mrs. Vaccaro was still a married woman and, therefore, could not be married to petitioner even if we believe the claim that it was in March of 1980 that papers were served on Mrs. Vaccaro to dissolve the marriage. From 1978 until June 1980, she was married to another, as was Mr. Baron during part of that time. It should be noted that in 1978 Mr. Baron specifically claimed that he did not know who Linda Vaccaro was, that there was no relationship between them and that the incident on April 20, 1978 at her home where he spent several hours, was for returning a gold watch that she allegedly lost (even though it had never been reported as lost). Strange as it may seem, even though Mr. Baron did not know who she was, nor allegedly had any interest in her, he still refused to obey lawful orders given to him and continued

to see this woman whom he "did not know" according to him, and all that during a period of time when active efforts were being made to eliminate the mafia in the County of Monroe.

2. THE ORDERS DID NOT VIOLATE PETITIONER'S PRIVACY RIGHTS

The United States Supreme Court case wherein a constitutional right of privacy was established was *Griswold v. Connecticut* 381 U.S. 479. However, subsequent U.S. Supreme Court cases have indicated that the right of privacy, as established in *Griswold,* is a right to be free from government intrusion in intimate matters pertaining to the family. *Eisenstadt v. Baird* 405 U.S. 438; *Zablocki v. Redhall* 434 U.S. 374 at 385; *Kerry v. Population Services* 431 U.S. 678 at 684-685.

In the case at bar, the activity petitioner alleges is protected by right of privacy, is his association, as a deputy sheriff, on or off duty, with an individual whom petitioner knew to be the wife of a leading mafia figure. Such activity is not an intimate family matter and is, therefore, not accorded constitutional protection under the right of privacy.

It is true that petitioner eventually married Linda Vaccaro, but such event took place years after the orders were issued and long after he was terminated. Furthermore, by petitioner's own admission, at the time the association with Linda Vaccaro began both he and Linda Vaccaro were married to two different people. Linda Vaccaro was attempting to reconcile with her husband and petitioner claimed that he did not know who she was and had no close relationship with her except for a mere acquaintanceship.

At the time the last set of charges was filed against petitioner, Linda Vaccaro was still married to her mobster husband and, therefore, no family relationship existed between petitioner and Mrs. Vaccaro. The orders of 1978 were given at a time when nei-

ther petitioner, nor his wife, by their own admissions, thought of being married and the violation and insubordination of the petitioner took place continuously, over a three year period, when he was not married to Linda Vaccaro, and when neither one of them was free to marry the other. Thus the fact that in July of 1980, long after petitioner was terminated, petitioner and Linda Vaccaro were married does not create a privacy right violation. There must be in existence a family relationship at the time the alleged violation of rights occurs.

But, even if the association with the wife of a leading mobster is an activity that falls within the protection zone of privacy, the petitioner must show that the order and regulations at issue are arbitrary and irrational as per the test set forth in *Kelley v. Johnson* 425 U.S. 238 so as to create a violation of First and Fourteenth Amendment rights of a government employee. This he failed to do. Sheriff Meloni's testimony, on the other hand, clearly established, without contradiction, that the orders were rational and even had compelling reasons, not only at the time they were issued, but also in March of 1980 when petitioner was charged with insubordination, which he admits.

3. THE DECISION BELOW DOES NOT CONFLICT WITH A DECISION OF ANOTHER COURT OF APPEALS

Petitioner claims that the Second Circuit's decision conflicts with the decision adopted by the Eleventh Circuit in the case of *Wilson v. Taylor* 733 F.2d. 1539. Petitioner claims that in that case the court held that a police officer's association with the woman he was dating was a constitutionally protected freedom of association.

Petitioner's interpretation of that case is erroneous. The Eleventh Circuit, in footnote 3 at page 1544, specifically stated that

their holding was a narrow one and that they do not hold that a law enforcement officer may never be fired because of associations with others.

The court itself distinguished between the case of *Wilson v. Taylor* and other cases by stating that in the *Wilson* case the City of Winter Park made the only argument that dating was not protected under the First Amendment freedom of speech provision, and thus the court found that dating in general is a protected right.

The court stated that the City did *not* make the argument that even if dating were protected under the freedom of association provision of the First Amendment, a law enforcement officer's rights under that provision could be curtailed due to the nature of police work. The court specifically stated:

> "We choose not to render an advisory opinion on what conduct would be sufficient for termination of a police officer who associates with certain felons, indicted individuals, suspects, or their relatives." (p. 1545)

Thus, it is clear that the *Wilson* court, did not address the issue which is central to our case, namely whether a police officer may date the wife of a mobster, either before or after the mobster's conviction, when the wife keeps in close touch, not only with the husband, but also with other reputed organized crime members. Thus, it is clear that there is no conflict between the two circuits and petitioner's reliance on *Wilson* is misplaced.

CONCLUSIONS

The Second Circuit upheld the decision of Judge Curtin, who, based on Sheriff Meloni's testimony, which was uncontradicted, found that based on the facts in this particular case the orders given to petitioner not to associate with the wife of a mafia leader were reasonable at the time he was brought up on charges for the third time for insubordination. Inasmuch as Sheriff Meloni's testimony was not contradicted and the orders were found reasonable, the Second Circuit was correct in affirming the decision.

The Second Circuit's decision applies to narrow circumstances and to specific facts, but even if its application was broad, it does not create new law as there are numerous decisions which have held that police officers behavior off duty may be curtailed and no conflict arises between the various circuits on this question.

Based on the above, it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

CHARLES R. VALENZA
Monroe County Attorney

NIRA T. KERMISCH
Deputy County Attorney
(Counsel of Record)
Attorney for Respondent

Supreme Court, U.S.
FILED
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No. 85-771

In The

Supreme Court of the United States

OCTOBER TERM, 1985

ROBERT G. BARON,

Petitioner,

vs.

ANDREW P. MELONI, INDIVIDUALLY AND AS SHERIFF OF THE COUNTY OF MONROE, AND THE COUNTY OF MONROE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONSE TO BRIEF IN OPPOSITION OF RESPONDENT COUNTY OF MONROE

ROBERT G. BARON
Petitioner
Appearing Pro Se
23 Chesham Way
Fairport, New York 14450
Telephone: (716) 425-1007

Daily Record Corporation
Rochester, New York

(12158)

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On Petition for a Writ of Certiorari To the United States Court of Appeals Second Circuit

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Response To BRIEF IN OPPOSITION OF RESPONDENT COUNTY OF MONROE

POINT I

Petitioner, Robert G. Baron, was exonerated in his Departmental Hearing of Discrediting the Sheriff's Department and Associating with a Person of Ill Repute.

> "The charges against Deputy Baron stem from the March 22 accident and subsequent newspaper coverage. They will be treated in inverse order.
>
> As noted above, Charge 3 claims a violation of Section IV "General Conduct," paragraph 4.2 entitled "Consorting with Persons of Ill Repute."...
>
> ...By what means, by what standards and most importantly by whose standards is one to determine that Linda Vaccaro is a person of ill repute or of questionable character? None of these questions may be answered by a resort to the Department's rules and regulations.
>
> Clearly, the Sheriff has a legitimate interest in regulating the conduct of his officers, both on and off duty. As noted hereafter, this may include some restraints on the First Amendment right of association, which could not otherwise apply to ordinary citizens. But a restraint, to be enforced, must be capable of understanding and application. The subject regulation provides no more guidance to the Sheriff's deputy than it does to this trier of fact.
>
> On two distinct grounds the regulation may thus be constitutionally infirm:
>
> (1) vagueness and
> (2) overbreadth

> Charge 2 against Deputy Baron claims a violation of Section IV "General Conduct," paragraph 4.1 entitled "Conduct Not to Discredit the Department."....
>
> The same constitutional infirmities which may attach to Section IV, paragraph 4.2 may attach to this section.....

The Hearing Officer then goes on to state...

> "While the orders when issued had a reasonable basis, it does not appear <u>from the record before me</u> that they continue to have such a basis."..."it is difficult to invision any interest that the Department can continue to have in restraining Deputy Baron's right to associate with her."

POINT II

Petitioner's work capability was not affected. By his association with Linda Vaccaro. The hearing officer stated:

> "Moreover, no proof has been adduced to suggest that Deputy Baron's performance as a deputy has been impaired by virtue of his association with Mrs. Vaccaro. On the contrary, his peers have testified that he was performing well in his duties on the road patrol, and as noted above has recently received an affirmative evaluation from his superior officers."...

The question then arises as to whether the order he disobeyed was reasonable or unreasonable?

All of Sheriff Meloni's testimony as to the reason for the order places it squarely on the

allegations that petitioner was associating with a person of ill repute and thus bringing discredit on the Sheriff's Department. If we rule out both the reasons for the order, as the Hearing Officer did, then there remains no reasonable basis for the order which petitioner admits he disobeyed.

POINT III

The Sheriff also states in his deposition that petitioner had access to sensitive information which he has not challenged to be fact or untruth. This and any statement referring to knowledge of the Sheriff's Department, Organized Crime Task Force, or the like were disputed by the Sheriff's own Chief of Detectives Anthony Yazbach, whom identified himself, at the time of the hearing, as the direct liaison between the Sheriff's Department, the District Attorney's Office, and the Organized Crime Task Force since the Task Force was formed in 1978, two years prior to Meloni becoming Sheriff.

Snyder: But, if he has nothing to tell Angelo Vaccaro, as you said, he knew nothing about what was going on, where is the danger of a breach of security?

Yazback: I don't know. I don't know.

In the deposition of Sheriff Meloni, he stated:

Q: But you have nothing to show any specific attempts to exploit Deputy Baron by members of organized crime.

A: I have nothing to suggest that that has occurred....

POINT IV

Respondents brief alleges an adulterous relationship between Petitioner and Linda Vaccaro, although no such proof was ever introduced, and is only introduced at this time to cast a shadow on Petitioner and raise a question of morality.

POINT V

In 1980, there was no reconciliation contemplated between Linda Vaccaro and Angelo

Vaccaro although such fact is alleged in Respondent's Brief. The long delay referred to in Respondent's Brief between Petitioner's discharge, Linda's final divorce decree based on abandonment for over one year and Petitioner's marriage to Linda was two months and six days.

POINT VI

The decision does conflict with a decision of another Court of Appeals.

WILSON v TAYLOR 733 F.2d. 1539, held that the police officer's association with the women he was dating was a constitutionally protected right. The respondent alleges that the difference between the two cases is that in this case Petitioner associated with a person of ill repute and that he brought discredit on the Department. He was exonerated of both of these charges and thus the only difference between the two case is that in Wilson v. Taylor the police officer associated with the daughter of a convicted organized crime figure, released from custody pending an appeal and in this

case Petitioner associated with the estranged wife of a convicted imprisoned organized crime figure.

CONCLUSION

Petitioner urgently requests that the Court read the full record of this case as it will substantiate all of Petitioner's arguments.